IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6880 OF 2002

Kiritkumar Dayabhai Shah & Anr. .. Petitioners

Versus

Jayakishan Dayabhai Shah & Ors. .. Respondents

Mr.P.S.Dani for petitioners

Mr.Ashok Saraogi for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : DECEMBER 16, 2004.

P.C.

. Petitioners filed a revision application No.96 of 1999 against an order passed by the Additional Collector, Thane in R.T.S. Appeal No.16 of 1991. That revision application was

preferred before the Additional Commissioner Konkan Division. Admittedly, the matter arises out of entries in record of rights. Petitioners claim that the lands are their ancestral property and, therefore, their names ought to have been entered in the records. It appears that, that application was allowed and respondent No.1 preferred an appeal to challenge the order passed by Nayab Tahsildar, Palghar. The order passed by the Nayab Tahsildar was set aside in appeal by the Additional collector and aggrieved by that order the revision application was preferred by the present petitioners.

2. It appears that the present petitioners had already impleaded all the heirs. That apart, they filed an application on 17th April 2001 for bringing on records heirs of the deceased. However, the revisional authority dismissed the revisional application on the ground that the heirs are not brought on record. That order was

passed on 6th July 2002. Petitioners applied for setting aside this order and restoration of the revision application for disposal on merits and in accordance with law. This application was filed on 5th August 2002.

3. It is a serious grievance of petitioners that both, the initial application as well as present application for restoration has been disposed of by the Commissioner behind their back and without affording any opportunity of being heard in the matter. Petitioners submit that matters pertain to entries to record of rights and there are consequences following entries. Consequently it was incumbent upon the Additional Commissioner to have granted full opportunity to the petitioners to contest the matter on merits and that having not been done, impugned order deserves to be quashed and set aside.

4. I have heard Mr.Dani, learned Counsel

appearing for petitioners and learned Counsel appearing for respondent Nos. 1 and 2. He prays for time as he has no instructions. He makes an application to this court for withdrawing his appearance.

5. In my view, the matter has been pending for last more than two years. Petitioners are not in any manner joining issues with the respondent Nos. 1 and 2 but they are aggrieved by the approach of the Additional Commissioner in disposing of the application for restoration as well as the main revision application.

6. Respondent Nos. 1 and 2 will not be prejudiced if the matter is restored to file as they would have opportunity to contest the claim of petitioners on merits. Hence, adjournment is refused.

7. The impugned orders being ex parte are

quashed and set aside. Rule is made absolute in terms of prayer clause (aa). Revision application No.96 of 1999 is restored to the file of Additional Commissioner, Konkan division. The Additional Commissioner is directed to dispose of the same on merits and in accordance with law, as expeditiously as possible and in any event, within a period of four months from today. All contentions are expressly kept open. Petitioners to pay cost quantified at Rs.1500/- to respondent Nos. 1 and 2. Ad-interim order passed by this Court on 7th January 2003 to continue during the pendency of revision application and for a period of two weeks thereafter. All concerned to act on an authenticated copy of this order.

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